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ANNUAL REPORT 2000

OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

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March 14, 2001

The Honourable Bill Hartley
Speaker
Legislative Assembly of British Columbia
Victoria, British Columbia
V8V 1X4

Dear Honourable Speaker Hartley:

Pursuant to section 51 of the *Freedom of Information and Protection of Privacy Act*, I have the honour to present the Office's eighth Annual Report to the Legislative Assembly. This report covers the period from January 1, 2000 to December 31, 2000. Future annual reports of this Office will also be presented on a calendar year basis.

Sincerely,

David Loukidelis
Commissioner

Mailing Address: PO Box 9038, Stn Prov Govt, Victoria B.C. V8W 9A4
Location: Fourth Floor, 1675 Douglas Street
Telephone: (250) 387-5629 Facsimile: (250) 387-1696
Toll Free enquiries through *Enquiry BC* at 1-800-663-7867 or 660-2421 (Vancouver)
website: http//www.oipcbc.org

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I. COMMISSIONER'S MESSAGE

My message this year, like that last year, divides into two parts. The first, and most significant, again deals with delay.

Continuing Concern Over Access Delays

In last year's annual report I raised the alarm about delays by some public bodies in responding to access to information requests. Although there are signs of hope in some quarters, my concern about delay by public bodies has not abated.

The delays we are finding with some public bodies threaten to become a systemic barrier to the right of access. There is no doubt that the culprit for the delays is almost always an excess of demand over resources. A few ministries in particular have seen notable increases, year-over-year, in the numbers of requests they receive, but new resources are not readily found to deal with those increases.

Two ministries that have struggled the longest with chronic backlogs have recently, at my urging, managed to re-allocate resources to address the problem. The former Deputy Minister of the Ministry of Social Development and Economic Security, Sharon Manson-Singer, laudably committed added resources to deal with the problems. The present Deputy Minister, Mike Corbeil, has continued those welcome steps to address the backlog. There is now only a two month backlog for requests for personal information and I will continue to monitor the progress in eliminating the backlog altogether. Backlog delays also plague the Ministry for Children and Families, which has for many years struggled with the Act's timelines. The current Deputy Minister, Sharon Manson-Singer, is again to be applauded for her recent direction that resources are to be re-allocated to deal with the backlog. It remains to be seen how quickly these Ministries will be able to comply with the Act, but I am encouraged by the commitment of resources and will watch the situation closely.

The Ministry of Forests has also not been meeting the Act's response timelines. For this reason, our Office last year made recommendations to the Ministry for revamping its access request decision process, to make it leaner and more efficient. The Ministry has received our input and has commissioned a thorough review by KPMG of the Ministry's access request processes. I await the results of this review and trust that it will result in changes that reduce the Ministry's turn-around times and its costs of compliance.

I have also been made aware in the past year of delays at some Crown corporations. The source of the problem in one case appears to be the notable increase in the numbers of access requests received. Our Office has urged that Crown corporation to create a process for routine disclosure of certain types of requests, which form a large part of its access to information business. Work is proceeding on this initiative, which our Office will watch closely. We will also be working in the coming months with other certain Crown corporations to advocate changes in their decision-making processes, again to make them more time- and cost-efficient.

This leads me to comment on the need for public bodies generally to make full use of their in-house access and privacy professionals. Over the past year, I have met with the access and privacy staff of a number of ministries and other public bodies, including those experiencing difficulty in meeting their statutory obligations. I continue to be deeply impressed by the skills, knowledge and experience of these people, who can only be described as professionals (a description that holds true even though I do not always uphold their decisions). Public bodies should take advantage of this professionalism. They should trust their professional staff to decide access requests without second-guessing them through sign-off processes that merely duplicate what has already been done. I recognize that a public body may have other legitimate reasons for reviewing such decisions, but generally the decision should be left to the professionals, without any further processes.

If public bodies are to be able to recruit, train and retain top-quality access and privacy staff, the classification of their positions must reflect the level of skill, experience, training and knowledge required of their incumbents. This is something that should be examined at the provincial level, with a view to increasing the classification of ministerial Directors/Managers of Information and Privacy and also their staff. This will enable ministries to find and keep good staff, who can make the right decisions (or defensible ones) without having to resort to costly second-guessing by more senior employees (including executives).

My last annual message referred to the need for provincial ministries, at least, to report annually on compliance with the Act. I urged the government to require these public bodies to report statistics annually to me, as is done in Ontario. This would enable us to more proactively identify delay problems as they arise. I also urged the government to enact modern records-management legislation, to promote the Act's goals of openness and accountability and to ensure the historical record is not lost. I again urge the provincial government to act on these matters.

I also urge the government to get on with amendments to the Act stemming from the four-year review completed in 1999 by the all-party Special Committee of the Legislature. My Executive Director made this same point in her annual report message last year and we still await movement on this issue. Amendments recommended by the Special Committee would, among other things, assist this Office in processing access appeals more efficiently, both in terms of time and cost.

Our Activities During 2000

Because space does not permit a full catalogue of our activities in 2000, I will touch on only a few.

One of the areas in which we became immersed last year is the privacy of health information. A number of initiatives – both legislative and programmatic, national and provincial – have raised the profile of health information privacy issues. At the national level, initiatives connected with the federally-funded Health Infoway have started the country on the road to harmonized health information legislation. Enactment last year of the federal *Personal Information Protection and Electronic Documents Act* is – assuming that Act is not amended to exclude health information – likely to have an impact on public and private sector health information laws across Canada and on the harmonization initiative. The British Columbia Act already addresses public sector health information practices, but the time has come to review how that Act works in relation to health information. During 2001, therefore, the Office will be looking at issues concerning patient consent and secondary uses of health information, including for research and administrative purposes. My goal is to provide a snapshot of how the Act is working in this area and to make recommendations, where necessary, on how to proceed in this area.

In last year's annual message, I foreshadowed a number of initiatives that we have now completed or on which we continue to work full bore. We have begun publishing our electronic newsletter, the *OIPC Voice*. This quarterly publication keeps public bodies and citizens alike abreast of current privacy and access issues. It also offers practical advice on the Act's administration, with a view to improving decision-making and making its application more efficient.

We are also nearing the final stages of a new design for the Office's Website. I initiated the re-design in order to ensure that our Website remains user-friendly and provides timely information in a straightforward fashion. Also as part of our electronic outreach work, we are continuing to revise and prepare new Web-based guidelines and resources for public bodies and citizens.

At my suggestion, Canada's privacy commissioners have agreed to work on a model privacy impact assessment and data-sharing toolkit, to serve as a template for use across the country. Our Office is taking the lead on this project and we anticipate having a draft ready later this year. At the same time, we are cooperating with ISTA in the hope that we can adopt a single web-based privacy impact assessment tool for British Columbia's public bodies to use in assessing the privacy-compliance aspects of their proposed programs or policies. Both this Office and ISTA now have PIA tools for public bodies and both acknowledge it would be better if we could agree on a single model.

We also continue to comment on legislation, an activity that saw me publicly oppose the *Secure Care Act* last September. I will continue, in this vein, to watch for and comment on legislation that departs from the access and privacy regime under the Act. I will be vigilant to guard against creeping repeal of the Act through measures such as the *Secure Care Act*.

This is my second annual report to the Speaker of the Legislative Assembly and the first occasion on which the Commissioner has reported on a calendar year basis. The move to a calendar year report – which I signalled early last year – better reflects how our Office discharges its functions. This report also introduces a new format for our reports, with a view to cutting costs and making the report more accessible than previous years.

David Loukidelis
Information and Privacy Commissioner
for British Columbia

II. EXECUTIVE DIRECTOR'S MESSAGE

The topic of delay is much on everyone's minds these days. Clearly there is truth to the adage (even in a modified version) that access delayed is access denied. While we as an office work cooperatively to assist public bodies with their delay issues, there are problems with delay that affect our work even more directly. I would like to provide some areas that are of concern to us and where we believe small improvements could yield significant results.

Before a file is open, we need all the relevant documentation, which includes a copy of the original access request and the public body's response letter. Often it can take us several phone calls to get the necessary paperwork so that the request for review can be opened and assigned to a Portfolio Officer for mediation. This can be frustrating for the applicant, who is waiting to have their matter begun.

During the mediation process we are also encountering more delays. Public bodies that have cumbersome sign off processes can make mediation difficult. Often we find that instead of a quick turn around on a further release, or even a staged further release while mediation continues, the public body is unable to agree to release the information before the end of our mediation process. This can result in inquiry notices being issued, even though it appears that the matter will be resolved when the information is released. This is time consuming for all concerned.

If a public body delays in providing a clean set of the records in dispute, our mediation process is also affected. Without knowing what information is being withheld we cannot make our recommendations as to whether or not it has been properly withheld. As we need to complete our mediation or go to inquiry within a mandated time frame, any delays will impact on our ability to effectively attempt to mediate a solution.

We also find that once the inquiry notices are issued, we are often asked for more time to prepare the submissions. While we are aware that the two weeks given to prepare the initial submissions can be challenging, rarely will the applicant agree to a time extension, or more delays, once the matter has been set down for an inquiry. We strongly recommend that public bodies notify their legal counsel before the inquiry notice is sent out if it looks like the matter will not be resolved through mediation. This will permit the necessary work to begin to prepare the case to go to the Commissioner.

Even with our concerns about delays during the processes within our office, we are still able to resolve over 90% of the matters that come to us. We are grateful to the applicants and public bodies who work so hard to resolve these matters in a timely manner, and hope that this will continue and improve in the future.

Lorraine A. Dixon

III. INTRODUCTION

This is the Office of the Information and Privacy Commissioner's eighth Annual Report. It explains the legislative mandate and role of the Commissioner's Office and provides information about its activities between January 1, 2000 and December 31, 2000.

THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

The Commissioner's Office was established in July of 1993 in accordance with the framework set out in British Columbia's *Freedom of Information and Protection of Privacy Act* (1992). The Office's mandate is to monitor the access to information and protection of privacy practices of public bodies in British Columbia. Public bodies include ministries; Crown corporations; government agencies, boards, and commissions; local public bodies, such as regional health boards, schools districts, municipalities, colleges, and universities; and self-governing professional bodies, such as the Law Society of British Columbia and the British Columbia College of Physicians and Surgeons.

The Office's primary activity is reviewing decisions made by public bodies about an individual's right of access to records in the public bodies' custody or control. Reviews occur when there is a dispute between applicants for records and public bodies about access rights. The Office also investigates privacy complaints about public bodies' inadequate protection of personal information. The Act further authorizes the Office to comment on legislation or public policy affecting information and privacy rights, and to inform the public about these rights.

The Office is headed by the Information and Privacy Commissioner. He is an Officer of the Legislature and is independent of government. This independence is essential to the Commissioner's ability to provide an impartial review of government's compliance with the Act. The Act provides that an Information and Privacy Commissioner is to be appointed for a six-year, non-renewable term of office. The present Information and Privacy Commissioner's term of office extends from 2000 to 2005.

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The *Freedom of Information and Protection of Privacy Act* provides individuals with the right of access to records in the custody or control of a public body in British Columbia, including the individual's own personal information. The Act also provides individuals with the right to protect the privacy of their personal information held by public bodies. The Act sets out further related rights, such as the right to request the correction of personal information if it is inaccurate, and the right to ask the Information and Privacy Commissioner to investigate disputes about information and privacy rights.

The overall purpose of the *Freedom of Information and Protection of Privacy Act* is to make public bodies more accountable for their actions and to ensure they protect the privacy of personal information entrusted to them.

IV. REQUESTS FOR REVIEW

INTRODUCTION

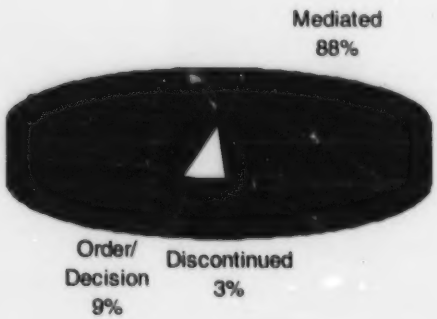
Section 52 of the *Freedom of Information and Protection of Privacy Act* authorizes the Commissioner to "review any decision, act, or failure to act" of a public body resulting from a request for records. This includes decisions about the disclosure of records, corrections to records, time extensions and fees.

THE REQUEST FOR REVIEW PROCESS

Requests for review are received by the Office's Intake Officers, who review them and often contact applicants to clarify the facts or circumstances. If a request for review can proceed, one of the Intake Officers will assign it to a Portfolio Officer, who has 90 days to investigate the case and try to assist the parties to resolve their dispute by mediation. If the parties can agree to a mediated settlement, the request for review is closed. If not, the review proceeds to a formal inquiry before the Information and Privacy Commissioner.

Ninety-one percent of requests for review that came to the Office were resolved without going to a formal inquiry. Eighty-eight percent of the cases were resolved by mediation, three percent were discontinued, and the remaining cases were resolved by Orders or other decisions by the Commissioner.

Figure 1: Disposition by Percentage of Requests for Review Closed Between January 1, 2000 and December 31, 2000



REQUESTS FOR REVIEW STATISTICS

From January 1, 2000 to December 31, 2000, the Office resolved **823** requests for review. Sixty-six requests required settlement by Order while five requests required a decision by the Commissioner that he either had no jurisdiction to issue an order or the matter was moot and no order was necessary. Together this represents only nine percent of the total requests for review. This low percentage of formal inquiries and Orders is due to the Office's strong emphasis on mediation as the primary tool for resolving disputes. The statistics this year reveal that the Office continues to serve as a centre of alternative dispute resolution.

Figure 2, below, sets out the disposition of requests for review by grounds closed between January 1, 2000 and December 31, 2000. Since many requests for review coming to the Commissioner's Office contain multiple issues, each review has been categorized only by its predominant ground for review.

The total requests for review settled by Order or Other Decision by the Commissioner differs from the total number of Orders or Decisions actually issued in this past calendar year. This is due to the fact that some orders or decisions can deal with more than one request for review either because the requests were made by the same applicant or involved similar records and issues. For further details on Orders or Other Decisions by the Commissioner, please see Chapter VI on Commissioner's Orders.

Figure 2: Disposition by Grounds of Requests for Review Closed Between January 1, 2000 and December 31, 2000

GROUNDS	MEDIATED	ORDER/DECISION	DISCONTINUED*	TOTAL
Access:				
Denied Access	114	14	3	131
Partial Access	275	34	10	319
Adequacy of Search	55	12	5	72
Correction Request	3	1	0	4
Deemed Refusal	170	2	3	175
Duty to Assist	20	3	4	27
Fees	33	1	1	35
Scope of Act	17	3	1	21
Third Party Request for Review	10	1	0	11
Time Extensions	22	0	1	23
Other	5	0	0	5
Total	**724**	**71**	**28**	**823**

* *"Discontinued" indicates those requests for review that were abandoned or withdrawn*

DEFINITIONS OF GROUNDS FOR REVIEW

Access:

Denied Access: This is a review of a decision by a public body to deny access to all records.
Partial Access: This is a review of a public body's decision to sever or withhold certain records.

Adequacy of Search: This is a review of whether further records exist. The issue is whether a public body conducted an adequate search for all relevant records.

Correction Request: This is a review of a public body's decision not to correct personal information.

Deemed Refusal: This is a review of a public body's failure to respond to a request within the designated time frame. The Act considers this failure as a decision to refuse access to the record.

Duty to Assist: This is a review of whether a public body has met its duty to assist an applicant, including the duty to create a record if one can be reasonably created from a machine readable record.

Fees: This is a review of the fees assessed by a public body for access to records, or a review of its decision not to waive fees when requested by the applicant.

Scope of the Act: This is a review of whether the requested record falls within the scope of the Act, including whether a public body has custody or control of the record.

Third Party Request for Review: This is a review of a public body's decision to provide an applicant with access to personal or business information of a third party.

Time Extension: This is a review of a public body's decision to extend the time limit for responding to a request for records.

Other: These include a review of whether a provision of the Freedom of Information and Protection of Privacy Act is inconsistent with a provision of another Act.

REQUEST FOR REVIEW STATISTICS BY APPLICANT TYPE

One of the questions most frequently asked of the Commissioner's Office is: "Who is using the Act to request reviews of public bodies decisions?" This is a difficult statistic to track accurately, since the Act does not require applicants to identify themselves as belonging to a particular group. When applicants do identify their affiliation, the request for review is categorized accordingly, as set out in Figure 3 below. If an applicant does not identify any affiliation, he or she is categorized as an individual requester. This may render the category of "Individual" slightly higher than is actually the case.

Figure 3: Type of Applicant Submitting Requests for Review for Cases Closed Between January 1, 2000 and December 31, 2000

TYPE OF APPLICANT	REQUESTS FOR REVIEW	PERCENTAGE OF TOTAL
Individual	592	71.9%
Organization*	102	12.4%
Commercial	75	9.1%
Media	36	4.4%
MLA	9	1.1%
Special Interest Group**	8	1.0%
First Nations	1	0.1%
Total	**823**	**100.0%**

* *e.g.; unions, associations, societies, non-commercial organizations*

** *e.g.; environmental, wildlife, human rights groups*

REQUEST FOR REVIEW STATISTICS BY PUBLIC BODY

Some public bodies are the subjects of requests for review to the Commissioner's Office more often than others. Normally, it is because they possess or handle more personal information than other public bodies. It also may reflect ongoing disputes about certain types of records, issues, or policies of a particular public body.

Figures 4 and 5, below, identify the number, grounds, and disposition of requests for review for the past calendar year, categorized by public body. Figure 4 identifies the grounds upon which reviews were requested, while Figure 5 shows how they were settled.

Note that there have been no requests for review made against the majority of public bodies under the Act. The total of 359 reviews for "All Other Public Bodies" represents, for the most part, the one or two requests for review that have been filed against 165 public bodies other than the ones specifically listed. None of these 165 public bodies received more than nine requests for review in total.

Figure 4: Grounds of Requests for Review Closed Between January 1, 2000 and December 31, 2000 by Public Body

	TOTAL	ADEQUATE SEARCH	CORRECTION REQUEST	DEEMED REFUSAL	DENIED ACCESS	DUTY TO ASSIST	FEES	PARTIAL ACCESS	SCOPE OF THE ACT	THIRD PARTY	TIME EXTENSION	OTHER
Insurance Corporation of BC	100	3	0	21	2	6	3	61	0	0	4	0
Attorney General	51	3	1	13	5	0	1	18	4	0	2	4
Vancouver Police Department	51	12	0	1	15	0	0	16	7	0	0	0
Children and Families	35	2	1	9	1	1	0	21	0	0	0	0
Finance and Corporate Relations	32	0	0	15	3	1	3	7	0	2	1	0
Social Development and Economic Security	30	2	0	21	1	1	0	5	0	0	0	0
Workers' Compensation Board	24	5	1	4	4	0	1	8	0	0	1	0
Environment, Lands and Parks	21	4	0	3	2	0	1	11	0	0	0	0
BC Securities Commission	16	3	0	1	0	2	1	9	0	0	0	0
Health	16	2	0	5	2	0	0	6	1	0	0	0
BC Hydro and Power Authority	12	0	0	5	1	1	0	2	0	3	0	0
University of British Columbia	12	2	1	2	0	1	2	4	0	0	0	0
Forests	11	1	0	4	0	0	2	4	0	0	0	0
Translink	11	2	0	5	1	1	0	1	0	0	1	0
Transportation and Highways	11	0	0	0	0	0	3	8	0	0	0	0
Victoria Police Department	11	0	0	1	2	0	0	8	0	0	0	0
Greater Vancouver Regional District	10	0	0	0	5	0	1	4	0	0	0	0
Vancouver Community College	10	0	0	0	10	0	0	0	0	0	0	0
All Other Public Bodies*	359	31	0	65	77	13	17	126	9	6	14	1
Total	**823**	**72**	**4**	**175**	**131**	**27**	**35**	**319**	**21**	**11**	**23**	**5**

* *See explanation of this category and its total figure of 359 in the paragraph above.*

Figure 5: Disposition of Requests for Review Closed Between January 1, 2000 and December 31, 2000 by Public Body

PUBLIC BODY	REQUESTS FOR REVIEW	MEDIATED	DISCONTINUED	ORDER/ DECISION
Insurance Corporation of BC	100	83	10	7
Attorney General	51	46	0	5
Vancouver Police Department	51	46	2	3
Children and Families	35	33	0	2
Finance and Corporate Relations	32	31	1	0
Social Development & Economic Security	30	28	1	1
Workers' Compensation Board	24	22	1	1
Environment, Lands and Parks	21	20	1	0
BC Securities Commission	16	11	0	5
Health	16	15	1	0
BC Hydro and Power Authority	12	12	0	0
University of British Columbia	12	8	1	3
Forests	11	10	1	0
Translink	11	8	3	0
Transportation and Highways	11	10	0	1
Victoria Police Department	11	11	0	0
Greater Vancouver Regional District	10	6	0	4
Vancouver Community College	10	10	0	0
All Other Public Bodies*	359	314	6	39
Total	**823**	**724**	**28**	**71**

* *See explanation of this category and its total figure of 359 in the paragraph above.*

SELECTED SUMMARIES OF RECENT MEDIATED REQUESTS FOR REVIEW

The following sample summaries of recent mediated requests for review represent the types of issues commonly brought before the Commissioner's Office and the range of mediated settlements it has been able to achieve.

A. Ministries, Crown Corporations, Boards, Agencies and Commissions

Fisheries Renewal BC – Protocols for Project Grant Funding

The Office of the Information and Privacy Commissioner (OIPC) dealt with several requests for review of access requests related to records about projects funded by Fisheries Renewal BC. The applicants wanted to know why some projects were funded while others were not, how the funding was used and by whom. One difficulty, from an access perspective, was that some records were subject to the Act while others were not. The OIPC learned that Fisheries Renewal BC receives funds from Forest Renewal BC, and that Fisheries Renewal BC approves projects and disburses money to umbrella organizations overseeing the projects. The umbrella organizations, in turn, provide funds to individuals, societies, and other organizations that carry out specific projects (e.g., stream restoration). Fisheries Renewal BC is a public body but, as neither the umbrella organizations nor the ultimate recipients of much of the funding are public bodies, many requested records, including most financial information, were not subject to the Act. Moreover, because most grant recipients are businesses, community organizations, partnerships, or individuals, much of the information is considered third party business or personal information subject to mandatory exceptions under the Act.

The review resulted in the disclosure of some additional information to supplement the large amount of information provided to the applicants at the outset. While the applicants were not pleased that they could not have access to more records, they understood that disclosure was limited by the lack of public body status of the organizations as much as by the exceptions to the general right of access.

The OIPC views this as an example of how accountability for the expenditure of public funds can be limited by the administrative structure and protocols concerning grant allocation to non-public bodies. While this is more of a "value-for-money" issue, best handled under an auditing stream, the OIPC sees the need for a government-wide policy to address shortcomings in financial reporting relationships so as to increase transparency regarding the use of public funds.

Ministry of Transportation and Highways – Historical Location of Roads on Native Land

A researcher for an aboriginal band council asked for a review of a Ministry's severing of a relatively small amount of information from a report related to the historical location of roads on reserve lands. The Ministry withheld some information on the grounds that disclosure might harm negotiations for compensation between the provincial government and the band. The applicant complained that access to information in this Ministry's records was typically refused by blanket reliance on sections 13, 17 and 21, and wanted an inquiry rather than a mediated settlement so they could ask the Commissioner to denounce that practice. In any event, the public body later decided to disclose the entire report by providing the applicant with unsevered copies of the pages from which information was initially withheld. The Ministry indicated the need to protect the information at least until it knew the status of the negotiations or had approval from government negotiators to disclose it. The Ministry did, however, acknowledge that some of the information initially withheld was not necessarily subject to all exceptions claimed for it and concurred with the Commissioner's historical position pointing out the need for line by line severing with a justification for the use of each exception in each instance. The Ministry indicated that it would adopt this approach to severing in all future requests.

Ministry of Environment, Lands and Parks – Third Party Objections to Disclosure of Information

The Ministry contemplated giving an applicant copies of all records in response to a request, including a consultant's report and miscellaneous related correspondence. The Ministry had given notice of its intention to release records to the third party who had paid for the report given to the Ministry and with whom much correspondence was exchanged. The third party objected to disclosure of what it considered "private" information. Although the OIPC was of the opinion that very little, if any, information could be categorized as subject to the section 21 exception, the matter was settled when the requester agreed to the disclosure of less than he was entitled, and the third party agreed to the disclosure of most of what it had initially wanted the Ministry to withhold.

Ministry of Attorney General – Records Related to Reasons Not to Prosecute

A journalist requested copies of records involved in the decision that led to the Ministry's decision not to lay criminal charges against a police officer for his handling of a criminal investigation. The Ministry denied access to the records under sections 14, 15(1)(g), 16 and 22 of the *Freedom of Information and Protection of Privacy Act* and the applicant requested a review of the Ministry's decision.

The Portfolio Officer agreed with the Ministry that at least sections 14 and 15(1)(g) applied to requested records but considered that the Criminal Justice Branch had not complied fully with section 15(4). This section says that public bodies must not refuse, after a police investigation is completed, to disclose the reasons for a decision not to prosecute, to certain categories of people. The Criminal Justice Branch had told the journalist that there was not a substantial likelihood of conviction and that it was not in the public interest to prosecute the officer.

The Portfolio Officer suggested that the intent of section 15(4) was that a public body was to provide details on the actual reasons for the decision not to prosecute in a given case and recommended that the Criminal Justice Branch provide a fuller description of its reasons. The Criminal Justice Branch accepted the Portfolio Officer's recommendations and sent a letter to the journalist with additional information on the reasons for its decision not to prosecute the officer. The journalist was satisfied with this disclosure.

Ministry of Attorney General – Residential Tenancy Branch Files and Arbitrator's Notes

The applicant's legal counsel requested full copies of all records contained in two residential tenancy branch files, including the hearing notes of the arbitrator. The Ministry responded that the content of those two files had been provided to the applicant earlier in the year, in response to a request for the evidence used by the arbitrator in making her decision. With regard to the arbitrator's notes, the Ministry responded that those records were outside the scope of the Act. The Ministry stated that there was no new information in the file to provide. The applicant's counsel requested a review of the Ministry's refusal to provide copies of the files, as she wished to ensure that the files were complete. The lawyer also wished to see the arbitrator's notes as there was no transcript or hearing record of the arbitration, making it unclear how the arbitrator had arrived at her decision.

The Portfolio Officer and the lawyer compared lists of records in the Residential Tenancy Branch files with the client's list of records, and determined that the client had received all of the records she had requested earlier (she had received the evidence but neither the administrative records nor the arbitrator's notes). The lawyer then requested an opportunity to view the files and the Ministry agreed to arrange this. The lawyer agreed to make her own arrangements with Ministry staff for the viewing.

As for the arbitrator's notes of the hearing, the Portfolio Officer told the lawyer that, in her view, the Ministry had acted correctly in saying that the notes were excluded from the scope of the *Freedom of Information and Protection of Privacy Act* under section 3(1)(b). This section excludes personal notes, communications or draft decisions of people acting in a judicial or quasi-judicial capacity. The Portfolio Officer provided the lawyer with a copy of the Information

and Privacy Commissioner's recent Order 00-16, which discusses personal notes and draft decisions of quasi judicial decision makers with the Labour Relations Board and deals extensively with the types of records that are excluded under section 3(1)(b) of the Act. The Portfolio Officer also reviewed the notes themselves and told the lawyer that they were clearly notes taken during the hearings and that they fell into the category of records excluded by section 3(1)(b). The Portfolio Officer recommended instead that the lawyer try to obtain the notes through the court discovery process and the lawyer decided to do so.

B. Local Public Bodies

Hospital – Request for Access to Deceased Mother's Medical Records

The applicant wrote to the Office asking for assistance in accessing her deceased mother's medical records. She had asked a hospital for access to her deceased mother's medical records and had been told by the hospital that, as there was no executor for her mother's estate, the signatures of all family members agreeing to the disclosure of the records, would be required prior to their release. Due to personal family problems, the applicant informed the Office that this was not possible and therefore requested a review of the hospital's response by this Office.

The Portfolio Officer gave a series of recommendations to the hospital on how to handle this type of request:

- the hospital should first consider if Regulation 3 of the Act applies (is the daughter acting in her deceased's mother's best interests in requesting access to the medical records?); and, if not,

- the hospital should then consider whether or not section 22 applies to the medical records and decide if it is required to withhold some or all of the records.

The hospital accepted the recommendations and the applicant and the hospital agreed to restart the request.

Hospital – Access Request for Birth Records

Applicant requested all records from a particular hospital concerning his birth as he felt there was some discrepancy regarding the identity of his mother. The hospital was unable to locate any records. This Office then suggested that he obtain a copy of his birth certificate from Vital

Statistics. He replied that he had tried but they had no record of his birth. After verifying from the applicant that his mother was still alive, this Office suggested that he confirm with his mother where indeed he had been born.

The applicant contacted this Office within a few days to say that his mother now said he had been born in a different hospital than the one where he had originally asked for records. Assistance was provided to the applicant as to whom he should contact at the second hospital. Within two weeks the applicant again contacted this Office to say that the new hospital had no record of him either and asked if it would be all right if his mother contacted this Office directly which she did.

The mother came to the Office and informed the Office that the information revealed about her through the applicant was false, and that she had never seen the applicant before two years ago, when the applicant became her boarder. When this Office attempted to relay this news to the applicant, he became quite distraught and hung up the phone. Some time later, the applicant came to the Office and provided copies of photographs of him and his "landlord" through the applicant's childhood, giving strong indication that she was in fact his mother. The applicant decided to withdraw his request.

Municipal Police Department – Request for Investigation Records

A woman and man were the subject of a police investigation, which resulted in charges being laid on the man but not the woman. Despite charges not being laid on her, her involvement in the activities which led to the police investigation resulted in the woman being fired from her job. The woman launched a grievance with her employer, which proceeded to arbitration. The employer's lawyer then requested records from the police file concerning both individuals. The police denied the request under sections 15(1) and 22(1). The lawyer requested a review of the public body's decision to deny access to the information requested.

The Portfolio Officer learned from the police that the investigation file contained large amounts of personal information on both the man and the woman. The police said that it would be a difficult task to sever the records in such a way as to provide meaningful information, even if, however unlikely, the woman gave consent for the police to provide her personal information to her former employer. The freedom of information co-ordinator for the police told the Portfolio Officer that he would provide copies of the records upon receiving an order for production from the arbitrator and that he had discussed this with the lawyer. The Portfolio Officer then spoke with the lawyer about this. The lawyer said that arbitration had not yet begun at the time she had made her request. It had since begun, however, and the lawyer said she would ask the arbitrator to order the police to provide the records.

Police Department – Request for a Police Report Regarding Deceased Person

An applicant requested access to information regarding the death of a friend. The police denied access to the applicant on the basis that the requested information was considered personal information of a third party and was not available without the consent of the legal next of kin.

The applicant appealed to the Commissioner's Office to review the decision of the police to deny access to the records that were requested. The applicant did not provide any evidence of being the personal representative of the deceased person. No evidence was provided that the applicant had the consent of any legal next of kin, nor was there any indication that the applicant had the authority to act on behalf of the deceased person. The Office confirmed the Police Department's decision that the information was not available to the applicant under the *Freedom of Information and Protection of Privacy Act.*

However, the Police Department confirmed that the coroner conducted a public inquiry into the death of the applicant's friend at which police evidence was heard. The applicant was subsequently directed to the Coroner's Office for a copy of the transcripts of the inquiry. The applicant did not pursue this matter any further with the Information and Privacy Commissioner's Office and the file was closed.

Police Department – Request for Personal Information

An applicant requested access to information gathered by the Police Department in relation to a police investigation pertaining to the applicant. The police disclosed most of the information, but continued to withhold some information, including statements that had been provided to the police in confidence by third parties.

The applicant appealed to the Commissioner's Office for a review of the Police Department's decision to withhold the third party statements as well as other information that was severed from the records.

In the course of mediation, the police consented to providing the applicant with a summary of the third party statements, as well as some of the information it had previously severed. However, the police continued to withhold the actual third party statements as well as the names of the third parties who provided the statements. The applicant was satisfied with the summaries the Police Department provided and the file was subsequently closed.

School Board – A Harassment Report

A union, on behalf of one of its members, made a request to a School Board for a copy of the report of an investigation into a complaint of harassment the member made against a vice-principal (the third party).

The School Board refused to release the report under sections 13, 17, and 22 of the Act, and also noted that the complainant had already received a summary of the report. The School Board did, however, release a summary of the report when the complaint was initially filed. The union requested a review by this Office, stating that the summary was too vague and did not satisfy their information needs.

The report contained third party information, which if released would require third party consent. Counsel for the third party was contacted by this Office and was invited to participate in mediated discussions. The School Board and the Union agreed to allow the third party's counsel to review the report during the mediation process on the undertaking that, the third party not receive a copy of the report and, that only the third party's personal information be discussed.

After reviewing the report, counsel for the third party advised the Office that they did not have a problem with most of the information being released as most of it was general, factual in nature or because all parties agreed on its content.

After further consideration and consultation with her client, counsel for the third party proposed an alternative settlement to releasing a severed report. To mitigate concerns the third party had regarding how the complainant might use the information contained in the report, it was proposed that the complainant review the report in the presence of counsel, rather than receive a copy. As part of the agreement, counsel for the Union had to agree not to reproduce or transmit the report to anyone. Counsel for the Union would only be allowed to show the report to the complainant and the complainant's Union representative, and only after each signed an agreement affirming that they would not discuss or disclose the contents of the report to anyone else or make use of the information for any other reason. The third party was given the same rights and was subject to the same conditions as the complainant.

The agreement was concluded by stating that the Freedom of Information request would now be deemed "settled". After minor editing changes, all parties agreed to the terms stated in the agreement and a copy of the report was provided to the Union's counsel.

V. COMPLAINTS

INTRODUCTION

Sections 42(2) and 52 of the *Freedom of Information and Protection of Privacy Act* authorize the Commissioner to receive and investigate complaints about a public body's compliance with the Act. Individuals can complain to the Commissioner's Office that a public body has collected, used, or disclosed their personal information inappropriately. They can also complain that a public body has not fulfilled its duty to assist them under the Act. The Commissioner's Office will investigate these complaints and make recommendations and decisions for their resolution.

THE COMPLAINT PROCESS

Complaints are received by the Office's Intake Officers, who review the relevant facts and circumstances and often contact the parties for more information. If the complaint can proceed under the Act, one of the Intake Officers will assign it to a Portfolio Officer, who has delegated authority from the Commissioner to investigate and resolve the issues of the complaint.

Based on the Portfolio Officer's findings, the Commissioner or Portfolio Officer may make recommendations requiring a public body to change the way it collects, uses, discloses, or secures personal information. The Commissioner may decide the issue is systemic or affects a significant number of people and thus assign it for further investigation and analysis, which may result in the release of a formal Investigation Report. Where a complaint is not substantiated, the Office may dismiss it.

STATISTICS FOR COMPLAINTS AND INVESTIGATIONS

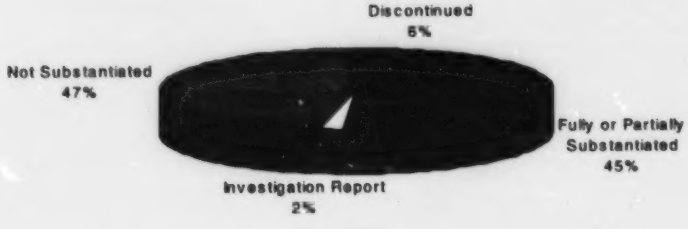
Between January 1, 2000 and December 31, 2000, the Office closed **93** complaints and **9** investigations, most of which pertained to inappropriate collection, use, or disclosure of personal information. Other complaints or investigations related to the failure of a public body to perform a duty imposed by the Act, such as the duty to assist an applicant.

Complaints and investigations explore similar issues. However, a complaint is normally opened in response to an individual's concerns about his or her personal information while an investigation is usually initiated by the Commissioner in response to concerns about systemic access or privacy issues.

Complaints are resolved through investigation, which typically results in findings that the complaint, in full or in part, is either substantiated or not substantiated. Where a complaint is substantiated, the Commissioner's Office makes recommendations to a public body for changes to its existing policies or practices. Where a complaint is not substantiated, the case is closed.

Investigations are normally concluded in a similar fashion. However, where a matter has garnered significant public interest or where the recommendations may be applied generally to all public bodies, the Commissioner may release an Investigation Report. This past year, the Commissioner issued two Investigation Reports.

Figure 6, below, sets out the Disposition of Complaints and Investigations Closed by the Commissioner's Office between January 1, 2000 and December 31, 2000 by percentage.



Since many complaints and investigations involve more than one issue, they have been categorized in figure 7, below, by their predominant grounds only.

Figure 7: Disposition of Complaints and Investigations Closed Between January 1, 2000 and December 31, 2000 by Grounds

GROUNDS	FULLY OR PARTIALLY SUBSTANTIATED	UNSUBSTANTIATED	DISCONTINUED*	INVESTIGATION REPORT ISSUED	TOTAL
Failure to Perform a Duty	13	5	1	0	19
Inappropriate Collection	8	12	1	1	22
Inappropriate Disclosure	23	29	4	1	57
Inappropriate Use	2	2	0	0	4
Total	**46**	**48**	**6**	**2**	**102**

* *"Discontinued" indicates those complaints that were abandoned or withdrawn*

DEFINITIONS OF GROUNDS FOR COMPLAINT

Failure to Perform a Duty: This is an investigation into an allegation that a public body has failed to perform a duty imposed by the Act, such as its duty to assist an applicant.

Inappropriate Collection: This is an investigation into an allegation that a public body has inappropriately collected personal information about an individual under the Act.

Inappropriate Disclosure: This is an investigation into an allegation that a public body has inappropriately disclosed personal information about an individual under the Act.

Inappropriate Use: This is an investigation into an allegation that a public body has inappropriately used personal information about an individual under the Act

COMPLAINT AND INVESTIGATION STATISTICS BY APPLICANT TYPE

Figure 8: Type of Applicant Submitting Complaints for Cases Closed Between January 1, 2000 and December 31, 2000

TYPE OF APPLICANT	COMPLAINTS AND INVESTIGATIONS	PERCENTAGE OF TOTAL
Individual	80	78.4%
Initiated by Commissioner*	8	7.8%
Commercial	5	4.9%
Special Interest Group**	4	3.9%
Media	2	2.0%
Organization***	2	2.0%
MLA	1	1.0%
Total	**102**	**100.0%**

* *The Commissioner may initiate an investigation without a complaint from the public if her determines that the subject represents a significant or systematic information or privacy issue*

** *e.g., environmental, wildlife, human rights groups*

*** *e.g.., unions, associations, societies, non-commercial organizations*

COMPLAINT AND INVESTIGATION STATISTICS BY PUBLIC BODY

Some public bodies are the subjects of complaints to, or investigations by, the Commissioner's Office more often than others. Normally, it is because they possess or handle more personal information than other public bodies. It may also reflect ongoing disputes about certain practices or policies of a particular public body.

Figures 9 and 10, below, indicate the number, grounds, and disposition of complaints or investigations concluded by the Commissioner's Office from January 1, 2000 to December 31, 2000, categorized by public body. Figure 9 indicates the grounds under which the complaints were filed or investigations launched, while Figure 10 indicates their final disposition.

There have been no complaints filed or investigations launched against the majority of public bodies covered by the Act. The category of "All Other Public Bodies" and its total figure of 45 represent the one or two complaints made against 41 public bodies other than the ones specifically listed.

Figure 9: Grounds of Complaints and Investigations Closed Between January 1, 2000 and December 31, 2000 by Public Body

PUBLIC BODY	COLLECTION	DISCLOSURE	DUTY	USE	TOTAL
Attorney General	2	8	0	0	10
Children and Families	2	7	1	0	10
Insurance Corporation of BC	2	6	0	0	8
Forests	0	2	5	0	7
Workers' Compensation Board	3	3	1	0	7
Health	1	2	2	0	5
BC Assessment Authority	1	2	1	0	4
Capital Health Region	0	2	0	1	3
University of British Columbia	0	0	2	1	3
All Other Public Bodies*	11	25	7	2	45
Total	**22**	**57**	**19**	**4**	**102**

* *See explanation of this category and its total figure of 45 in the paragraph above.*

Figure 10: Disposition of Complaints and Investigations Closed Between January 1, 2000 and December 31, 2000 by Public Body

PUBLIC BODY	FULLY OR PARTIALLY SUBSTANTIATED	NOT SUBSTANTIATED	DISCONTINUED	INVESTIGATION REPORT ISSUED	TOTAL
Attorney General	6	4	0	0	10
Children and Families	5	5	0	0	10
Insurance Corporation of BC	2	5	0	1	8
Forests	5	1	1	0	7
Workers' Compensation Board	3	4	0	0	7
Health	3	2	0	0	5
BC Assessment Authority	4	0	0	0	4
Capital Health Region	0	3	0	0	3
University of British Columbia	0	3	0	0	3
All Other Public Bodies*	18	21	5	1	45
Total	**46**	**48**	**6**	**2**	**102**

* *See explanation of this category and its total figure of 45 in the paragraph above.*

SELECTED SUMMARIES OF RECENT COMPLAINTS

The following complaint summaries are generally illustrative of the type of complaints received by the Commissioner's Office and how the Office handles them.

A. Ministries, Crown Corporations, Agencies, Boards and Commissions

Public Bodies – Disclosure of Personal Information for Law Enforcement Purposes

An individual complained that one public body, during the course of its investigations into allegations about him, revealed information to a second public body which resulted in the second body launching its own, separate investigation. The Office found the complaint of an unauthorized disclosure of personal information to be unsubstantiated, on the basis that the Act allows one public body to disclose information to another in prescribed circumstances. In this case, the disclosure was intended to "assist in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result".

The investigation by the first public body involved questioning an official of the second public body, which was the individual's employer. The questions from this investigation would have, likely prompted the second public body to initiate its own separate investigation into the same allegations. However, the complaint included allegations that the investigator from the first public body told the second public body to initiate its own investigation.

The complaint was difficult to assess because there is not much difference between an investigator directly alerting a second public body to the need for its own investigation and indirectly doing so merely by asking a few questions. Although the complaint was unsubstantiated when all circumstances were assessed, the Office had concerns about the way the first body initiated contact with the second public body, and emphasized to both the need for the other to have an active investigation case file before disclosing to it the personal information of any individual.

Ministry of Attorney General – Collection of Information About Employee's Child

Corrections officer complained to the Office that his employer required him to fill out a medical leave form (an ST02) with medical information on his child's illness, whenever he was away from work due to the illness of his dependent child. This medical leave form is used for administering the Short Term Injury and Illness Program (STIIP) for provincial government employees. The complainant said that leave for a child's illness is not administered under the STIIP. He said he did not believe that his employer had the authority to require him to fill out the medical leave form when he requested leave for family illness.

The Portfolio Officer found that the medical leave form was indeed the wrong form and that the employer was asking for information on the child's illness when it did not need this type of information to decide if the employee was entitled to leave for family illness. According to the Public Service Employee Relations Commission's policy, employers are only entitled to request confirmation that the child was ill and required care at home by the employee.

As a result of the complaint, the employer changed its practice to simply requesting a doctor's note, signed and dated for the time of the child's illness, with confirmation that the child was ill and needed care at home. The Office considered that this was an appropriate response to the complaint, the complainant agreed and the issue was resolved.

B. Local Public Bodies

School District – Attempt to Resolve a Parent's Ongoing Concerns

On a regular basis, a parent submitted letters and e-mail messages to school district officials and trustees, raising his concerns about various district initiatives, activities and actions of particular staff or trustees. The correspondence was usually long and convoluted and often contained personal information about several individuals, including other parents. The parent also sent copies of his correspondence to a number of staff, trustees and parents.

School district administrators responded to some of the correspondence but ignored the rest due to difficulty in determining what the issues were and due to the questionable nature of some of the information.

The parent became frustrated with the school district's delays in addressing his issues, not taking appropriate action and ignoring other matters completely. As a result, the parent began to make freedom of information requests for records related to the various issues he had raised, and any records that contained information about himself.

Initially, the school district responded to the requests appropriately and in a timely manner. However, as the number of requests mounted, and as some requests involved a large number of records, the school district's responses were usually late.

These delays resulted in the parent making several requests for review to this Office concerning the school district's untimely response to his access requests. Following involvement of the Portfolio Officer, the district's responses came in a more timely manner. The school superintendent recognized, however, that further requests would follow unless the underlying issues between the parent and the district were addressed.

The superintendent arranged for a mediator to meet with him and the parent. The superintendent was concerned with the district's ability to respond to the volume of correspondence and what he considered to be inappropriate use of third party personal information in the parent's correspondence. The parent was concerned that he was not receiving a timely response to the issues he raised and in some cases, felt that his issues were being ignored completely.

While the superintendent and the parent continue to meet with the mediator, some positive outcomes have resulted from the mediation process. In particular, the parent is now making fewer, more focused freedom of information requests facilitating the ability for the school district to respond to his requests.

INVESTIGATIVE REPORT SUMMARY

Investigation Report 00 – 01
Investigation Into the Use of Alumni Personal Information by Universities

In this investigation, the Commissioner dealt with concerns that had been raised about the disclosure of university alumni mailing lists for the purpose of sending promotional material to alumni. The report addresses these issues and includes recommendations to universities for improving their privacy protection practices where personal information is collected, used or disclosed for alumni purposes, and in particular, for the marketing of products or services to alumni.

In the past, some universities or their alumni associations disclosed alumni lists to insurance companies and banks for their use. The Commissioner found that current practices do not involve this type of disclosure, rather, the alumni mailing list is kept under the custody and control of each university's alumni relations program. He accepted that these programs and alumni associations work closely together to promote university initiatives and goals, including fund raising, with alumni members.

While the investigation concluded that the Universities' collection, use and disclosure of alumni personal information were in accordance with the Act, the Commissioner afforded some recommendations to address and prevent similar privacy concerns in the future:

- The Alumni Relations Program, should, in its "application to graduate" form, appropriately notify the student that personal information collected will be disclosed to the alumni association for the purpose of informing alumni of the association's activities and for marketing products which may be of interest to them;
- The Universities should, on a regular basis, send a reminder to alumni to allow them the opportunity to opt out of further disclosure of their personal information for the purposes described above;
- A university and its alumni association should enter into written agreements establishing acceptable practices concerning the collection, use and disclosure of personal information by the alumni association; and,
- Universities should not disclose alumni personal information, directly or indirectly, to companies wishing to market their products to alumni.

The complete investigation report can be found on the OIPC website at
http://www.oipcbc.org/investigations/reports/invrpt00-01.html

VI. COMMISSIONER'S ORDERS

INTRODUCTION

Sections 56(1) and 58(1), (2), and (3) of the *Freedom of Information and Protection of Privacy Act* provide that the Commissioner must dispose of requests for review by an Order if they cannot be settled by mediation. The Commissioner may make Orders on the right of access to records, time extensions, corrections to records, and fees. The Commissioner may also make Orders on the collection, use, and disclosure of personal information under the Act.

Orders arise out of formal inquiries where the Commissioner reviews the facts, issues, and records of a particular dispute and then makes a decision. The Commissioner is the impartial adjudicator of a case and his decisions are final and binding under the Act. If individuals involved in the case are dissatisfied with the Commissioner's decision and want to appeal, they must take their case to the Supreme Court of British Columbia and apply for Judicial Review.

- The Commissioner's Orders are available at: http://www.oipcbc.org/orders/orders_index.html

THE FORMAL INQUIRY PROCESS

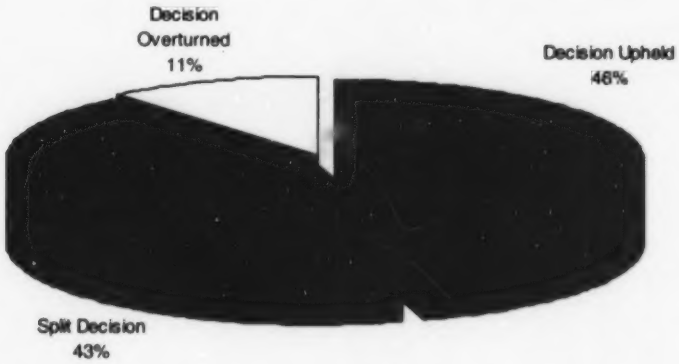
Inquiries are conducted by the Commissioner. He decides if they will be oral or written, who may make submissions during the inquiry and also all questions of fact and law arising during the inquiry. The Commissioner has 90 days within which to conclude the inquiry, although the first portion of the 90 days is normally allocated to Portfolio Officers for the purposes of mediation. After the Commissioner has concluded his inquiry, he makes an Order, which is released to the parties and becomes a public document. The Order may require a public body to withhold records, release records, or resolve issues concerning times extensions, corrections to records, or fees. It also may decide matters related to the collection, use, and disclosure of personal information. Public bodies must comply with the Commissioner's Orders within 30 days.

- A Chronological Table of Orders and a Table of Concordance Between the Orders and the Act is available on the Office's web site at: http://www.oipcbc.org/orders/concordance.html.

DISPOSITION OF COMMISSIONER'S ORDERS

Between January 1, 2000 and December 31, 2000, the Commissioner released 53 Orders. Twenty-four of the Orders upheld the decision of the public body, while six of them overturned a public body's decision and twenty-three contained a split decision. The Commissioner also issued two Decisions where he found in one case, that he had no jurisdiction to make an order; and in the other, that there was no issue on which to make an order.

The disposition of Commissioner's Orders by percentage issued between January 1, 2000 and December 31, 2000 is set out in Figure 11 below.



SELECTED SUMMARIES OF RECENT ORDERS

Order 00-08 – Inquiry Regarding Records of the College of Physicians and Surgeons of British Columbia

The BC College of Physicians and Surgeons had received a complaint against Dr. Doe, a physician under its authority under the *Medical Practitioners Act* (MPA). The College had obtained expert opinions for use in its investigation into the complaint. This Order involved five records of these expert opinions.

The College refused to disclose the records of the expert opinions, claiming that they were exempted under sections 12 (Local public body confidences), 13 (Policy advice, recommendations, or draft regulations), 14 (Legal advice), and 15 (Law enforcement) of the Act. Further, the College argued that s. 22 actually required it to withhold the information in order to protect the experts' personal privacy.

The Commissioner determined that the College was not authorized to withhold any information under the exemptions in ss. 12(3)(b), 13(1), or 15(1)(a) or (c).

- **Local public body confidences** - s. 12(3)(b): The College failed to establish that there had been a properly authorised non-public meeting, let alone that the records in question would reveal the substance of deliberations at such a meeting.
- **Policy advice or recommendations** - s. 13(1): The records in question did not qualify as advice or recommendations. Rather, they contained factual findings and non-prescriptive analysis.
- **Law enforcement** - s. 15(1): Although the College did have a law enforcement mandate under the MPA, it failed to establish a reasonable expectation of harm from disclosure of the records.

The Commissioner also considered the two common law branches of solicitor client privilege (s. 14), and found the College was only entitled to withhold a part of one of the records, under the first branch of solicitor client privilege.

- **Branch 1: solicitor-client communication privilege.** A public body has the authority to withhold confidential communications made between a lawyer and client for obtaining or giving legal advice. This does cover communications between lawyers and third parties, however. In this case, the records were mostly communications between a third party and a lawyer, so except where one record contained text reflecting a lawyer's analysis or advice the College was not justified in refusing access.

- **Branch 2: litigation privilege.** A public body may withhold communications between a client or lawyer and a third party if the dominant purpose for which the communication came into existence was to prepare for, advise upon, or conduct litigation that was underway or in reasonable prospect at the time. The Commissioner found that in this case, litigation privilege did not apply because the College did not do the investigation, of which the records were a part, in contemplation of litigation.

Finally, the Commissioner required that some of the information (the third party experts' personal information) be withheld under s. 22(1).

The College petitioned for Judicial Review of this Order. The court decision has yet to be handed down.

Order 00-22 – Inquiry Regarding Attorney General Health Services Contracts

The BC Nurses Union requested, under the Act, copies of contracts between the Ministry of Attorney General and two private health care contractors. The contracts were for the provision of health care services at correctional facilities operated by the Ministry. The applicant Union claimed to represent most of the contractors' employees.

The Ministry withheld some contractual information from the Union, including global contract amounts, hourly rates and other breakdowns of global contract amounts. It did so on the grounds that s. 21(1) of the Act requires a public body to withhold confidential information that relates to the commercial interests of the third party contractors.

The Commissioner found that the Ministry was not required to withhold the information, because s. 21 "does not operate as a blanket protection from all perceived or real negative effects on third parties of doing business with government." In particular, the Commissioner found that the disputed information had been negotiated by both parties and had not been "supplied" in confidence within the meaning of s. 21(1)(b). This meant that the Ministry was not required to refuse access. On the contrary, the Commissioner required the Ministry to provide the Nurses Union with access to the requested information.

The Ministry's petition for Judicial Review was heard on November 7 & 8, 2000. The Judicial Review was dismissed and the Commissioner's decision upheld on January 16, 2001.

Order No. 00-47 – Inquiry Regarding Malaspina University-College Records

The applicant wrote to Malaspina University-College requesting his own personal records. The College's initial response was that the College was not required to respond to the request, since the applicant had previously signed a waiver in the college's favour. That waiver was a sweeping agreement which included, among other things, the following:

> THE RELEASOR [THE APPLICANT] HEREBY REMISES, RELEASES, AND FOREVER DISCHARGES the Releasee [the College] of and from any and all manner of actions, causes of action, claims and demands of any nature or kind whatsoever, whether in law or in equity, whether known or unknown, which the Releasor now has, or can or may have related to or arising out of the employment or termination of employment of the Releasor by the Releasee .... .

Despite its initial refusal to respond, the College later did respond to the request under the Act. However, it refused the request, taking the position that the information the applicant was seeking was subject to solicitor client privilege and therefore exempted from disclosure by s. 14 of the Act.

On the issue of whether the applicant could have contracted out of his rights under the *Freedom of Information and Protection of Privacy Act*, the Commissioner found that he could not. Based on public policy, the Commissioner found that rights and obligations under the Act cannot be waived by contract. More specifically, the Commissioner decided that in giving the public a right of access to records, the purpose of s. 2(1)(a) is to benefit the community at large, not only its individual members. The right to access therefore cannot be waived on a case-by-case basis. Despite having signed a contractual release, the applicant was not precluded from making an access request for records; nor was the public body excused from responding.

However, the Commissioner found that once the public body had responded, its refusal to give access in light of solicitor client privilege was appropriate.

JUDICIAL REVIEW

There were no Judicial Reviews of the Commissioners Orders concluded in 2000.

Copies of Judicial Review decisions are available by contacting the B.C. Supreme Court registries in Vancouver at (604) 660-2845, or Victoria at (250) 356-1478, or by linking from the table of Judicial Reviews on the Commissioner's Office web site to the corresponding B.C. Supreme Court decisions on the B.C. Superior Courts' web site at: http://www.courts.gov.bc.ca.

VII. SECTION 43 AUTHORIZATIONS

Section 43 of the *Freedom of Information and Protection of Privacy Act* provides that the Commissioner may authorize a public body to disregard requests for records that are "repetitious or systematic" in nature, and which "would unreasonably interfere with the operations of the public body." The purpose of section 43 is to prevent irresponsible use of the Act by applicants.

This year, the Commissioner's Office received four section 43 requests from public bodies, all of which were subsequently withdrawn by the public body as a result of mediation with this Office.

* Section 43 authorizations are available on the Office's web site at: http://www.oipcbc.org/orders/section43/

VIII. INFORMING THE PUBLIC

Section 42(1)(c) of the *Freedom of Information and Protection of Privacy Act* authorizes the Commissioner to inform the public about the Act. The Office fulfills this educational mandate by interacting with the media; participating in and hosting conferences; presenting speeches, seminars, workshops, and video conferences; and developing various public education materials and tools, such as the Office's web site, information kits, FAQs, and an information and privacy rights brochure.

WEBSITE UPDATE

The Commissioner's Office continues to update its web site with new and relevant information. The purpose of the web site is to increase public awareness of the *Freedom of Information and Protection of Privacy Act* by making information about it and the Office as broadly accessible as possible. It plays an important role in the Office's communication and education strategy and continues to experience increased usage each year.

The web site currently includes the following relevant materials:

- A copy the *Freedom of Information and Protection of Privacy Act*
- The Commissioner's Orders
- The Commissioner's Investigation Reports
- News releases for Orders and Investigation Reports
- Section 43 authorizations
- A Table of Concordance cross-referencing sections of the Act with the Orders
- A Table of Judicial Reviews of the Commissioner's Order linking to the B.C. Superior Courts web site
- The Office's Annual Reports for 1994/95, 1995/96, 1996/97, 1997/98, 1998/99, and 1999/00
- The OIPC VOICE Newsletter
- The Office's Information and Privacy Rights brochure
- The Office's Policies and Procedures
- Privacy Advice; including Fax , E-mail Guidelines, Privacy Impact Assessments, Travel Guidelines, and Q's and A's About Privacy and School Safety.
- Submissions by the Office to other public bodies, such as the Legislative Assembly and Industry Canada
- Copies of the Commissioner's speeches and presentations
- Information about past and future information and privacy events, such as conferences and workshops
- Links to other major information and privacy web sites in Canada and around the world
- How to contact the Commissioner's Office

APPENDIX A

FINANCIAL STATEMENT

BUDGET ALLOCATION FOR THE 2000/2001 FISCAL YEAR

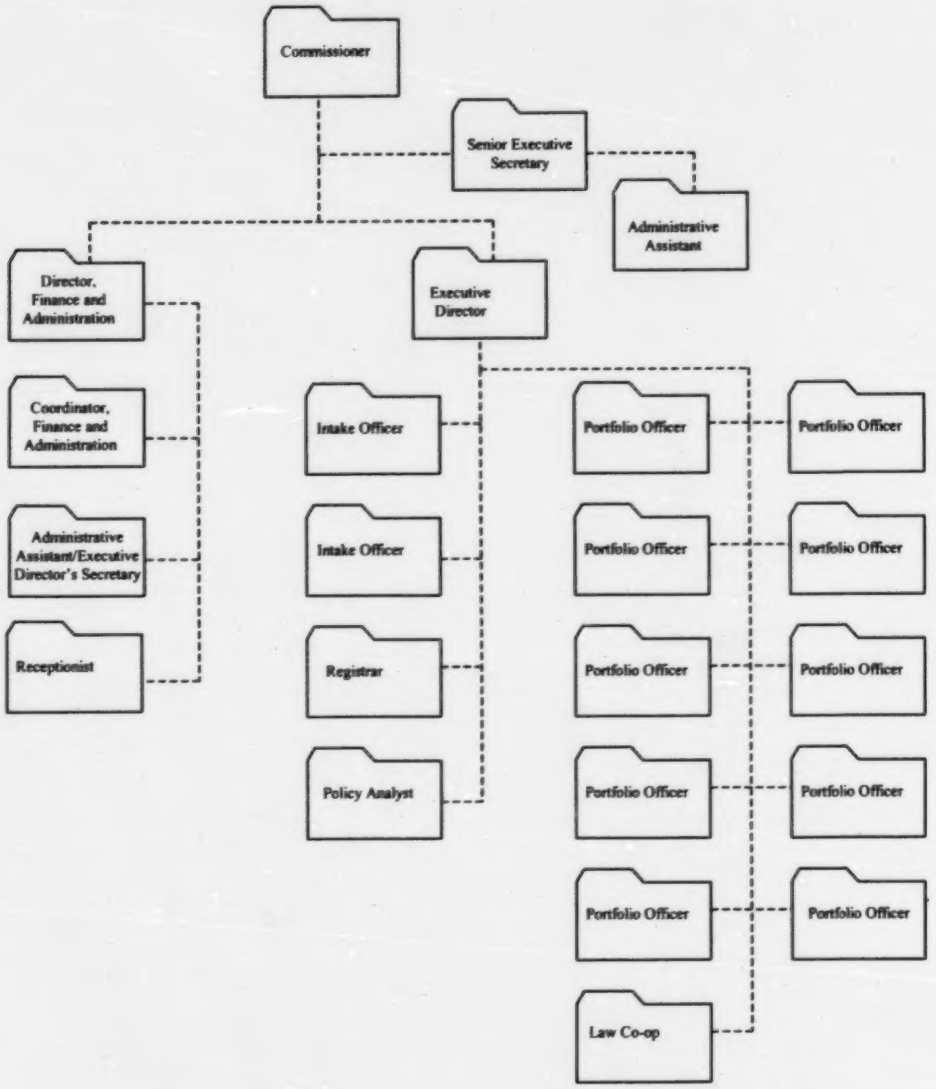
Total Salaries and Benefits	$1,647,000
Total Operating Costs	$ 648,000
Total Recoveries	($15,000)
Total Voted Expenditure	$2,280,000

The Office of the Information and Privacy Commissioner's 2000/2001 Expenditure Target reflects the annual operating costs and the funding required to achieve the goals of its jurisdiction.

APPENDIX B

OFFICE ORGANIZATIONAL CHART

Office of the Information and Privacy Commissioner for the Province of British Columbia



APPENDIX C

HOW TO CONTACT THE COMMISSIONER'S OFFICE

- By Telephone: (250) 387-5629

Or for toll free access within British Columbia, call Enquiry BC at the number in your area below and ask to be transferred to 387-5629:

Vancouver: 660-2421
Victoria: 387-6121
Elsewhere in B.C.: 1-800-663-7867

- By Facsimile: (250) 387-1696

- By Mail:
  Office of the Information and Privacy Commissioner for British Columbia
  PO Box 9038, Stn Prov Govt. Victoria, B.C. V8W 9A4

- By E-mail: info@oipcbc.org

- By Web Site: http://www.oipcbc.org

- In Person:
  Office of the Information and Privacy Commissioner for British Columbia
  4th Floor, 1675 Douglas St. Victoria, B.C. V8V 1X4

NOTE: The Office does not accept requests for review or privacy complaints by e-mail, since it is not an acceptably secure medium for this purpose. The Office accepts all other enquiries by any of the means of contact set out above.